



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Joe Earnest
County Attorney
Mitchell County
Colorado City, Texas

Dear Sir:

Opinion No. O-7275

Re: Whether town lots in
Colorado City, conveyed
to Southwestern Univer-
sity in 1887, are exempt
from taxation.

Your request for opinion on the captioned subject
has been given careful consideration by this department.
From such request we quote the following:

"Southwestern University of Georgetown, Texas,
is the owner of certain lots and blocks in the city
of Colorado City which were given to it by Deed of
Gift to the Trustees of said university and their
successors, in May, 1887.

"These lots have been assessed for taxes by
Mitchell County for State and County taxes for
the years 1930 to 1945, inclusive, by the Colorado
Independent School District for the years 1927
to 1945, inclusive, and by the city of Colorado
City for the years 1920 to 1945, inclusive. None
of these taxes have been paid and all are delin-
quent. Southwestern University claims that these
lots are exempt from taxation under and by virtue
of an opinion rendered by the Hon. C. A. Sweeton,
Assistant Attorney General, to H. B. Terrell,
Comptroller, on June 15, 1916.

"All the buildings, libraries, lands,
apparatus, and other property of the
Southwestern University owned and held

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by it at the time its charter was granted, as well as such property thereafter acquired by it, is exempted from any kind of tax so long as such property is used for the support and endowment of said university.'

"Although these lots are and have been vacant and unimproved every since 1887, they are claimed to be a part of the endowment of Southwestern University, and exempt from taxation under the charter granted by the Legislature to Southwestern University in 1875.

"A few months ago your department in an opinion addressed to the County Attorney of San Saba County held that 200 acres of land owned by said college in said county is subject to taxation and that suit could be brought thereon to collect the State and County taxes.

"Your last opinion made no reference to the former opinion of June 15, 1916, nor to the charter granted by the legislature to Southwestern University in 1875, which exempted from taxation 'the buildings, libraries, land, apparatus and other property shall be exempt from any kind of tax so long as used for the support or endowment of the University'.

"It will be observed that your last opinion on the San Saba County question is apparently in direct conflict with the former opinion of June 15, 1916. I therefore submit the following question for your determination:

"Are the town lots in Colorado City, above mentioned, conveyed to Southwestern University in 1887, exempt from taxation by virtue of the exemption provision in the charter of Southwestern University, above quoted?"

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Section 4 of the Charter of Southwestern University granted to it by Acts 1875, 14th Legislature, 2nd Session, p. 27, Ch. 18, provided in part that:

" . . . the buildings, libraries, lands, apparatus and other property shall be exempt from any kind of tax so long as used for the support or endowment of the university."

At that time, the applicable constitutional provision (of the Constitution of 1869) permitted the exemption from taxation of "such property as two-thirds of both houses of the legislature may think proper to exempt from taxation" It appears, therefore, that the exemption of the property in question was authorized.

Therefore, we re-affirm the opinions of June 15, 1916, and of January 14, 1905, for the duration of the original charter so granted by the Legislature; that is, for the period from February 6, 1875, to February 6, 1925. By its own terms, such charter was to continue in force for 50 years from the date of its passage.

The original charter of Southwestern University expired on February 6, 1925. In purported compliance with the terms of Article 1315, R.C.S., this corporation was "revived" by filing a new charter with the Secretary of State, on May 30, 1924. This instrument sought to extend the life of the corporation for 50 years from February 6, 1925, the expiration date of the original charter. This new charter varied the terms of the original charter somewhat, for Article 5 thereof contains this provision:

" . . . And the buildings, libraries, apparatus, and other property shall be exempt from any kind of tax so long as used for the support and endowment of the University, as provided in Section 2, Article 8 of the Constitution of the State of Texas." (emphasis ours)

The Constitution referred to in this Article of the new Charter is the Constitution of 1876, and therefore the question of exemption, vel non, of the properties of the

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University since February 6, 1925, must be determined by the provisions of that Constitution and the statutes enacted pursuant thereto. The University, through its proper officers, has brought itself within the terms and provisions of the Constitution of 1876, and must abide by it.

Article VIII, Section 2, of the Constitution authorizes the Legislature to exempt from taxation by general law certain named properties. This section reads in part as follows:

" . . . The legislature may, by general laws, exempt from taxation . . . all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools . . . ; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, . . . ; and all laws exempting property from taxation other than the property above mentioned shall be null and void." (Emphasis ours)

It is seen, therefore, that for an exemption to exist it must be found in both the Constitution and the statute. Article 7150 exempts from taxation, among other properties, the following:

" . . . All public colleges, public academies, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, and all such buildings used exclusively and owned by persons or associations of persons for school purposes; provided that when the land or other property has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect bonds or mortgages in

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where said endowment funds are invested, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer" (Emphasis added)

"Buildings" as used in the Constitution and the statute has been held to include the land upon which the same stand as well as such grounds thereabout as are used in the actual operation of the school, such as yards and recreational grounds. *St. Edwards College v. Morris*, 17 SW 512, 22 Tex. 1; *Cassiano v. Ursuline Academy*, 64 Tex. 673; Opinion No. O-3063; Opinion No. O-6435. Since the lots in Colorado City are not adjacent to or even near the campus of the University, they cannot come within the above construction, and cannot be exempt thereunder.

Nor can these lots be considered exempt as a part of the "endowment funds" of Southwestern University. They are not funds, but real estate. They were acquired in 1887 by deed of gift, and not within the past two years by purchase under foreclosure of a mortgage. A similar situation was discussed by the Supreme Court in *Harris v. City of Fort Worth*, 180 SW 2d 131, 135, where the Court said:

"The trust agreement describes the property that constitutes the endowment fund for Texas Christian University, but it is clear that the real property owned by the trust fund is not within the tax exemption, except for the two-year exemption on land bought in at foreclosure sales. The fact that the Constitution and the Statutes grant this two-year exemption in favor of certain real property negatives an intention to exempt real estate generally as part of an endowment fund. *Hillbaps College v. City of Jackson*, 136 Miss. 795, 101 So. 574, affirmed 275 U.S. 129, 48 S. Ct. 94, 72 L. Ed. 196."

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We are constrained to hold, therefore, that the town lots in Colorado City, inquired about by you, are not exempt from taxation, and have not been exempt since February 6, 1925.

Yours very truly

ATTORNEY GENERAL OF TEXAS.

By *Arthur L. Heller*
Arthur L. Heller
Assistant

APPROVED AUG 6 1945

Arthur L. Heller
ASSISTANT
ATTORNEY GENERAL

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